

APR 17 2002

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 5083
Date Complaint Filed: August 31, 2000
Date of Notification: September 7, 2000
Date Activated: July 13, 2001

Expiration of Statute of
Limitations: June 19, 2005

1 COMPLAINANT: Dave Leach, Prayer and Action News

2
3 RESPONDENTS: Gore 2000 Inc., and Jose Villareal, as treasurer
4 Citizens for Harkin, and Theresa L. Kehoe, as treasurer
5 National Stonewall Democratic Federation, and
6 Michael Perez, as treasurer
7 National Stonewall Democrats

8
9 RELEVANT STATUTES: 2 U.S.C. § 441d(a)
10 2 U.S.C. § 434 (c)
11 2 U.S.C. § 431(17)
12 2 U.S.C. § 441b
13 11 C.F.R. § 110.11(a)
14 11 C.F.R. § 109.2
15 11 C.F.R. § 100.22(a)
16

17 INTERNAL REPORTS CHECKED: FEC Indices and Disclosure Reports

18
19 FEDERAL AGENCIES CHECKED: None
20

21 I. GENERATION OF MATTER

22 Dave Leach of Prayer and Action News filed a complaint alleging that at a June 2000 Gay Pride
23 parade in Des Moines, Iowa, he saw campaign signs advocating the election of Al Gore and Tom
24 Harkin that did not contain a disclaimer. Complainant videotaped the parade, and he enclosed pictures
25 of two campaign signs. (See Attachment 1). One sign states: "Gore 2000," with a pink triangle placed

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in the middle of the poster, and "www.stonewalldemocrats.org"¹ on the bottom of the sign. The other sign reads: "HARKIN U.S. SENATE," but did not display a reference to a website. Al Gore's principal campaign committee at the time of the alleged activity was Gore 2000, Inc., with Jose Villareal as treasurer ("the Gore Committee"). Tom Harkin's principal campaign committee is Citizens for Harkin, with Theresa Kehoe as treasurer ("the Harkin Committee").²

II. FACTUAL AND LEGAL ANALYSIS

A. Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that any person making an expenditure for the purpose of financing communications that expressly advocate the election or defeat of a clearly identified candidate through any outdoor advertising facility or any other type of general public political advertising shall clearly state that the communication has been paid for by such authorized political committee, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents. 2 U.S.C. § 441d(a). The disclaimer must clearly state who paid for the communication and whether the candidate authorized it. *Id.* According to 11 C.F.R. § 110.11(a)(5), the disclaimer notice must be clearly and conspicuously displayed. A notice is not clearly and conspicuously displayed if the print is difficult to read or if the placement is easily overlooked. *Id.*

The Act states that every person other than a political committee who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year must file reports

¹ This website appeared to be sponsored by both the National Stonewall Democratic Federation ("NSDF") and National Stonewall Democrats ("Stonewall Democrats"). NSDF is a registered political committee, with Michael Perez as treasurer. Stonewall Democrats is a 501(c)(4) nonprofit corporation that is not registered with the Commission.

² Although Harkin was not a candidate in 2000, his principal campaign committee was raising funds at the time, apparently for his 2002 reelection campaign.

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with the FEC in accordance with the Act and Commission regulations. 2 U.S.C. § 434(c); 11 C.F.R. § 109.2. The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without the cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. The Act prohibits any contribution or expenditure by a corporation in connection with a federal election. 2 U.S.C. § 441b(a).

B. Responses to the Complaint

1. The Gore Committee's Response

The Gore Committee submitted three arguments in its response to the complaint.³ The Gore Committee first asserts that it did not participate in the parade and neither did anyone else from the Gore campaign. To support this argument, the Gore Committee submitted sworn affidavits from Janet Murguia, Deputy Campaign Manager, and Gary Gruver, Assistant Treasurer/Controller. Murguia states that the Gore Committee did not have any knowledge or coordination with a "Gay Parade" on June 19, 2000. Gruver adds that the Gore Committee closed its Iowa office in January 2000 and did not have any office or staff there during June 2000.

Secondly, the Gore Committee argues that the sign is not a committee-authorized sign because it contains a reference to the website www.stonewalldemocrats.org, not the campaign website www.algore.com. Additionally, the Gore Committee submitted an affidavit from Steve Schwat, its exclusive vendor, who asserts that all Gore Committee signs contained a proper disclaimer. Further,

³ Due to a clerical oversight, this Office originally sent notification of the complaint to Gore/Lieberman, Inc. rather than Gore 2000, Inc. When Gore 2000 was later notified of the complaint, it resubmitted the response of Gore/Lieberman.

1 Schwat states that the Gore Committee did not order any signs with a pink triangle until August 4,
2 2000 (after the parade).

3 The Gore Committee's final argument in response to the complaint is that the sign is
4 permissible grassroots political activity by persons not affiliated with the campaign. According to the
5 Gore Committee, "anyone could obtain an authorized [Gore] Committee sign, take it to any number of
6 printers located in every community throughout the United States, and have the sign reproduced with
7 or without changes to the content, and completely without the authorization or even knowledge of the
8 [Gore] Committee." Furthermore, the Gore Committee asserts that the Act does not require it to police
9 the use of its logo.

10 **2. The Harkin Committee's Response**

11 The Harkin Committee, in its response, first states, "it is not clear from the photocopy . . . that
12 the sign in question is even a [Harkin] Committee sign." If it is, then the Harkin Committee asserts
13 that it contained a proper disclaimer. According to a sworn affidavit by the owner of Carter Printing,
14 which prints all yard signs ordered by the Harkin Committee, all signs have the "clear and conspicuous
15 disclaimer, 'Paid for by Citizens for Harkin.'" The Harkin Committee also contends that there is no
16 requirement in the regulations that the disclaimer "be easily read by a person monitoring a parade from
17 a safe distance."

18 **3. National Stonewall Democratic Federation's Response**

19 Apparently referring to the Gore sign, NSDF asserts that it did not authorize or pay for "the sign
20 in question." NSDF did not make any reference to the Harkin sign in its response. Michael Perez,
21 treasurer of NSDF, states that the internet address on the Gore sign indicates that it was printed by
22 Stonewall Democrats. Perez states that Stonewall Democrats is a "completely separate legal entity"

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and claims that he does not have access to Stonewall Democrats' files. Finally, Perez notes that NSDF has dissolved and is awaiting termination approval from the Commission.⁴

4. National Stonewall Democrats' Response

Stonewall Democrats, in its response, acknowledges that it paid for and printed the Gore signs. Stonewall Democrats did not make any reference to the Harkin sign in its response. Stonewall Democrats explains that because of "an honest mistake," the Gore signs did not contain an appropriate disclaimer. Stonewall Democrats further states that it ordered 1,000 such signs and gave them to gay and lesbian members and to grassroots clubs. Stonewall Democrats enclosed a copy of the receipt for the signs, which shows the total cost to be \$877.73. The receipt, from Mac Mannes, Inc., lists Steve Schwat as the individual vendor. Finally, Stonewall Democrats says that it will correct the matter immediately by encouraging destruction of existing signs.

C. Discussion

The signs at issue in this matter expressly advocate the election of Al Gore and Tom Harkin. See 11 C.F.R. § 100.22(a) (defining "express advocacy" as any communication that "[u]ses phrases such as . . . 'Smith for Congress,' 'Bill McKay in '94,' . . . [or] 'Carter '76'"). Therefore, the signs should have contained a disclaimer stating who paid for the sign and whether any candidate or candidate's committee authorized it. 2 U.S.C. § 441d(a).

1. The Gore Signs

Stonewall Democrats has stated that it paid for the Gore signs and admitted that the signs lacked the appropriate disclaimer. However, the receipt for the signs lists the buyer as "National Stonewall Democratic," which may refer to the National Stonewall Democratic Federation. Although

⁴ NSDF filed a termination report on July 31, 2001. On August 24, 2001, this Office advised NSDF that its request for termination was denied.

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1 NSDF and Stonewall Democrats are separate legal entities, the two organizations appear to be closely
2 related. The website in question, www.stonewalldemocrats.org, appears on NSDF letterhead.
3 Moreover, the website itself contained countless references to NSDF.⁵ In addition, NSDF sometimes
4 refers to itself as "National Stonewall Democrats," as seen on its termination report filed with the
5 Commission on July 31, 2001. Nonetheless, a search of NSDF's disclosure reports indicates no
6 payments to the vendor who sold the signs.⁶

7 The Act requires only the person paying for the Gore signs to include a disclaimer. 2 U.S.C.
8 § 441d(a). Because Stonewall Democrats appears to have paid for the signs, it alone is liable for the
9 omission of a disclaimer. Because the cost of the signs exceeded \$250, Stonewall Democrats is also
10 liable for failing to file an independent expenditure statement with the Commission. 2 U.S.C.
11 § 434(c)(1). Finally, because Stonewall Democrats is incorporated, it is liable for violating the Act's
12 prohibition against corporate expenditures.⁷ 2 U.S.C. § 441b. Therefore, this Office recommends that
13 the Commission find reason to believe that National Stonewall Democrats violated 2 U.S.C.
14 §§ 441d(a), 434(c)(1), and 441b. The limited amount of the funds involved (less than \$1,000) does not
15 justify proceeding to the next stage of the enforcement process. *See* MUR 5129.⁸ Therefore, this

⁵ The website has recently been updated and no longer prominently mentions NSDF. To view previous versions of the website, visit the following internet address and click on a date to view the Stonewall website as it existed on that date: web.archive.org/web/*/www.stonewalldemocrats.org.

⁶ Stonewall Democrats does not publicly file disclosure reports.

⁷ Certain nonprofit organizations are exempted from the Act's prohibition on corporate independent expenditures. 11 C.F.R. § 114.10. However, not enough information is currently available to determine whether Stonewall Democrats qualifies for this exemption.

⁸ MUR 5129 (Larry E. Johnson for Congress Congressional Committee) was a *sua sponte* submission that involved communications that lacked a disclaimer. The amount spent on the improper communications appeared to be less than \$3,000. The Commission found reason to believe that the Committee violated 2 U.S.C. § 441d(a), sent an admonishment letter, and took no further action.

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Office further recommends that the Commission send an admonishment letter and take no further action with respect to National Stonewall Democrats.⁹

The Gore Committee and NSDF do not appear to have paid for the signs. Consequently, they are not liable for the omission of a disclaimer. 2 U.S.C. § 441d(a). Therefore, this Office recommends that the Commission find no reason to believe that Gore 2000, Inc. and Jose Villareal, as treasurer, or the National Stonewall Democratic Federation, and Michael Perez, as treasurer, violated 2 U.S.C. § 441d(a).

2. The Harkin Sign

The photograph of the Harkin sign, which was attached to a moving vehicle in the parade, does not appear to contain a disclaimer. However, because the photograph was taken from a distance and is blurry, it is possible that the sign does include a disclaimer. Regardless, Complainant provided no facts about who paid for the sign. Unlike the Gore signs, there is no reference to a website or any other indication of who sponsored the Harkin sign.

The Harkin Committee asserts that if the sign were one of those it paid for, then the sign would have contained an appropriate disclaimer. To support this contention, the Harkin Committee submitted a sworn affidavit from its exclusive vendor, who states that all yard signs produced for the Harkin Committee contain a clear and conspicuous disclaimer. Consequently, there is no basis to conclude that the Harkin Committee financed this particular sign, which appeared in an election year in which Senator Harkin's name was not on the ballot. Therefore, this Office recommends that the Commission find no reason to believe that Citizens for Harkin and Theresa L. Kehoe, as treasurer, violated 2 U.S.C.

⁹ This Office considered the possibility that the activity was coordinated because a common vendor, Steve Schwat, sold signs to both Stonewall Democrats and the Gore Committee. Nonetheless, the complaint did not allege coordination and there are no other facts to support such a theory. Moreover, the limited amount of funds involved in the activity does not warrant utilizing the Commission's resources for an investigation.

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§ 441d(a) and close the file. Although the sign does not appear to have a disclaimer, this Office does not plan to conduct an investigation because there is no information that more than one sign existed, there are no known respondents, and a significant amount of time has passed since the parade.

Consistent with the Commission's treatment of materials to release to the public in MUR 5119 pending the resolution of the appeal in *American Fed'n of Labor and Congress of Indus. Orgs. v. Federal Election Comm'n*, 177 F. Supp.2d 48 (D.D.C. 2001), *appeal docketed*, No. 02-5069 (D.C. Cir. Feb. 28, 2002), this Office intends to provide the complainant, the respondents, and the public with copies of only the certification of the Commission's vote and this General Counsel's Report.

III. RECOMMENDATIONS

1. Find reason to believe that National Stonewall Democrats violated 2 U.S.C. §§ 441d(a), 434(c)(1), and 441b, send an admonishment letter but take no further action;
2. Find no reason to believe that Gore 2000, Inc. and Jose Villareal, as treasurer, violated 2 U.S.C. § 441d(a);
3. Find no reason to believe that National Stonewall Democratic Federation, and Michael Perez, as treasurer, violated 2 U.S.C. § 441d(a);
4. Find no reason to believe that Citizens for Harkin, and Theresa L. Kehoe, as treasurer, violated 2 U.S.C. § 441d(a);
5. Approve the appropriate letters; and

6. Close the file.

Lawrence H. Norton
General Counsel

Date

4/17/02

BY:

Rhonda J. Vosdingh

Associate General Counsel for Enforcement

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Attorney

Other Staff Assigned:

Elizabeth F. Williams

Attachment:

1 - Photograph of signs in parade.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel
DATE: April 17, 2002
SUBJECT: MUR 5083 – First General Counsel's Report

The attached is submitted as an Agenda document for the
Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

DISTRIBUTION

SENSITIVE ☒
NON-SENSITIVE ☐

COMPLIANCE ☒

72 Hour TALLY VOTE ☒

Open/Closed Letters ☐

24 Hour TALLY VOTE ☐

MUR ☐

DSP ☐

24 Hour NO OBJECTION ☐

STATUS SHEETS ☐

Enforcement ☐

INFORMATION ☐

Litigation ☐

PFESP ☐

96 Hour TALLY VOTE ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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